

Application Serial No.: 10/715,221  
Amdt. dated June 21, 2006  
Reply to Office Action of February 21, 2006

**Amendments to the Drawings:**

The attached replacement sheet includes changes to Figure 5 and replaces the original sheet illustrating Figure 5. In Figure 5, element 114 has been changed to 113.

Attachment: Replacement Sheet

## **REMARKS**

In response to the Office Action mailed February 21, 2006, Applicant respectfully requests the Examiner to reconsider the above-captioned application. By way of this amendment, claims 24, 31 and 45 have been amended.

### **Objection to Drawings**

The Examiner objected to the drawings because it is unclear what "114" in Figure 5 is referring to. The Examiner noted that, in paragraph [0063], "114" has been used to indicate "body 114" of lock 70, as shown in Figures 7-9.

Applicant has submitted a replacement sheet for Figure 5 wherein element "114" has been changed to "113." To be consistent, paragraph [0080] of the specification (describing Figure 5) has also been amended to change "114" to "113." As corrected, "113" now refers to the "tissue contacting surface 113" on body 102. Applicant wishes to thank the Examiner for noting that "114" had inadvertently been used to refer to two different structures in the application as filed.

### **Objection to Specification**

The specification has been updated to indicate that 09/968,272 is now U.S. Patent No. 6,709,456.

### **Objections to the Claims**

In claim 45, "10mm" has been changed to "10mm<sup>2</sup>." Applicant wishes to thank the Examiner for noting this typographical error.

### **Rejection of Claims 24, 26-33, 37, 38, 40, 42 and 44-46 under 35 U.S.C. § 103(a)**

Claims 24, 26-33, 37, 38, 40, 42 and 44-46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Solem et al. (USPN 6,210,432) in view of Machek et al. (USPN 5,954,761). The Examiner asserts that it would have been obvious to include the lead assembly of Machek et al. with the stent structure of Solem et al. to make electrode stents for sensing and pacing in addition to anchoring.

To further clarify the structure of the claimed invention and more clearly distinguish over the cited references, claim 24 now recites “a forming element attached to the elongate body at a point of attachment for manipulating the elongate body between the first transluminal configuration and the second remodeling configuration, wherein the forming element is slidably contained within the elongate body between the attachment point and the proximal end.” Neither of the cited references teaches or suggests a device comprising a forming element that is slidably contained within an elongate body between an attachment point and a proximal end, as recited by Applicant.

Applicant further notes the U.S. Court of Appeals for the Federal Circuit has held that “[t]he PTO has the burden under section 103 to establish a *prima facie* case of obviousness...It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). With reference to the present application, there is no objective teaching in the prior art that would lead a person of ordinary skill in the art to combine a device for treating mitral insufficiency (Solem et al.) with an endocardial lead assembly for cardiac rhythm management (Mechak et al.) to provide the claimed invention. The Federal Circuit has stated that it is impermissible simply to engage in a hindsight reconstruction of the claimed invention, using the applicant’s structure as a template and selecting elements from references to fill the gaps. Most, if not all, inventions are combinations of known elements.

In view of the above, Applicant respectfully requests reconsideration of claim 24 and claims 26-33, 37, 38, 40, 42 and 44-46 which depend therefrom.

### **Double-Patenting**

Claims 24, 26-34, 36-38, 40, 42 and 44-46 have been rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 6, 14, 17, 18, 20, 22, 24-26 and 30-32 of U.S. Patent No. 6,402,781 in view of Machek et al. Claim 24 has been amended to define distinguishing features which are not taught by the cited references, thereby obviating the need for a Terminal Disclaimer.

**Fees Due to File This Amendment**

Prior to the pending Office Action, a fee was paid for the original 49 claims, with 4 of them being independent claims. The aforementioned claim additions and cancellations have not resulted in more than the original number of claims, and **thus no claim fees are believed to be due** to file this amendment.

**Conclusion**

In light of the foregoing response and the above remarks, Applicant believes that this application is now in condition for allowance. Should the Examiner have any remaining questions, the Examiner is encouraged to contact the attorney of record at the telephone number shown below.

Respectfully submitted,

Date: June 21, 2006



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